

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, ELVIRA BUMPUS,
RONALD BIENSDEIL, LESLIE W. DAVIS III,
BRETT ECKSTEIN, GLORIA ROGERS,
RICHARD KRESBACH, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON, JEANNE
SANCHEZ-BELL, CECELIA SCHLIEPP, and
TRAVIS THYSSEN, RON BOONE, VERA BOONE,
EVANJELINA CLEERMAN, SHEILA COCHRAN,
MAXZINE HOUGH, CLARENCE JOHNSON,
RICHARD LANGE, and GLADYS MANZANET,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Case No. 11-CV-562
JPS-DPW-RMD

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, TIMOTHY VOCKE and
KEVIN KENNEDY, Director and General Counsel for the
Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRIS,
PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC., RAMIOR VARA,
OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, TIMOTHY VOCKE and
KEVIN KENNEDY, Director and General Counsel for
the Wisconsin Government Accountability Board,

Defendants.

**INTERVENOR-PLAINTIFFS' BRIEF IN OPPOSITION TO
INTERVENOR-DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

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NATURE OF PROCEEDINGS TO DATE

Complaint

This proceeding involves, in part, the boundaries of the Wisconsin's Congressional Districts. The original complaint was filed by Alvin Baldus, and others. Wisconsin's five Republican Congressional Representatives intervened as defendants. Wisconsin's three Democratic Congressional Representatives intervened as plaintiffs. Since the Second Amended Complaint and the Complaint-in-Intervention are similar this brief will refer to the Second Amended Complaint as the complaint.

The complaint complied with the principle of notice pleading. It alleged three claims against the Government Accountability Board ("GAB") arising out of Wisconsin Act 44 relating to congressional redistricting. These claims are:

Fourth Claim

Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest

[It includes these allegations:]

50. The federal and state constitutions require that political districts be compact and preserve communities of interest, including core populations that historically have been in the same district.
51. The compactness of a district refers both to its shape and the ability of its citizens to relate to each other and their elected representative and the ability of the representative to relate to his or her constituents.

* * *

53. A related principle is that communities be preserved. A "community of interest" refers to local government units and tribal boundary and also includes but is not limited to considerations of the citizen's ethnicities, cultural affinities and traditional geographical boundaries, historical political representations and the community's need for government services.

54. Fracturing communities of interests adversely affects the ability of citizens to relate to each other and their representatives.

EIGHTH CLAIM

New Congressional and Legislative Districts Are Not Justified By Any Legitimate State Interest.

89. The state failed to take into account the well-established principles of compactness, maintaining communities of interest, and preserving core populations from prior districts in establishing new district boundaries.

Defense Motion On the Pleadings.

The defendant intervenors have moved for Judgment on the Pleadings. The bulk of the brief argues that the political gerrymandering claim should be dismissed because it is not justiciable.

The brief also includes an attack on the compactness and community of interest allegations by citing various facts. However, the motion does not request dismissal of the claims based upon the traditional redistricting concepts of compactness, communities of interest, and retention of core populations as alleged in the fourth and eighth claims.

Although the motion is titled as a judgment on the pleading it incorporates abundant facts in the brief at pages 12-16 relating to, among other things: the relative locations of cities in various districts; the lack of growth of Milwaukee County, the increases in growth in the Fox River Valley, the Madison Area, the Milwaukee suburbs and the Wisconsin suburbs of Minneapolis-St. Paul; the reason for moving various Milwaukee suburbs; that the changes in the boundaries of the Third and Seventh Districts are relatively minor (Int.-Def. Br., p. 13) and might benefit Republican Representative Sean Duffy (Seventh District) and Democratic Representative Ron Kind (Third District).

Position of Intervenor Plaintiffs

A consideration of the issues in this case requires an analysis of numerous facts. However, by raising these facts this motion has been converted into a motion for summary judgment. Fed. R. Civ. P. 12(d); *See also Miller v. Herman*, 600 F.3d 726, 733 (7th Cir. 2010) (“If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.”)

The Intervenor-Plaintiffs adopt the Plaintiffs’ brief relating to the fifth claim of political gerrymandering. Rather, the Intervenor-Plaintiffs will focus this brief on the fourth and eighth claims relating to retention of core populations, compactness, and communities of interest.

It is the Intervenor-Plaintiffs’ position that the Intervenor-Defendants have not established a basis for summary judgment and that there are triable issues of fact. The redrawn congressional boundaries violate universally recognized redistricting principles set forth in the complaint in the fourth and eighth claims.

INTRODUCTION

A number of exhibits relevant to this analysis are attached the Affidavit of P. Scott Hassett, filed herewith. Exhibit 1 shows the Congressional District boundaries prior to the enactment of Act 44. (Hassett Aff., ¶ 2, Exh. 1.) Exhibit 2 shows the Congressional District boundaries resulting from Act 44. (Hassett Aff., ¶ 3, Exh. 2.) Exhibit 3 is an overlay of Exhibit 1 and 2 that shows the changes. (Hassett Aff., ¶ 4, Exh. 3.) A large copy of Exhibit 3 will be provided to the court and forwarded to the chambers of the three judges on this panel and to any party who requests a copy. Exhibit 4 is an enlargement of exhibit 2 focusing on how the new boundaries carve up the communities in Marathon, Portage, and Wood Counties, which had been

in the Seventh District for at least seventy years, and now divide them between the Third District and the Seventh District. (Hassett Aff., ¶ 5, Exh. 4.) Exhibit 5 is an enlarged Wisconsin highway map of Marathon, Portage, and Wood Counties. (Hassett Aff., ¶ 6, Exh. 5.) Professor Randy Cray, Professor of Economics at the University of Wisconsin-Stevens Point has identified various institutions and features that establish the economic and cultural integration of the area.

This brief will be supported by affidavits of:

1. Former Congressman David R. Obey, who served in Congress from the Seventh Congressional District from 1969 to 2001.
2. Professor Randy Cray—Professor of Economics at the University of Wisconsin--Stevens Point and Director of the Central Wisconsin Economic Research Bureau.
3. Professor Erik V. Nordheim—Professor, Department of Statistics, University of Wisconsin--Madison.
4. Erik R. Olson—Chief of Staff for Congressman Ron Kind.

The Intervenor-Plaintiffs' case focuses upon the redistricting of Congressional Districts ("CD") Three, Seven, and Eight. (Hassett Aff., ¶¶ 2-4, Exh. 1-3.) These three districts cover approximately three-fourths of the area of Wisconsin. It excludes the southeastern one fourth of Wisconsin.

Following the 2000 census the bipartisan Wisconsin Congressional delegation recommended the boundaries to the Wisconsin legislature. (Hassett Aff., ¶ 2, Exh. 1.) The legislature adopted the recommendation, the Governor signed it, and it became law.

Following the 2010 census Wisconsin had grown about 6%. This meant that the ideal population for a CD should be 710,873 (Nordheim Aff., ¶ 2, Exh. B, p. 4, hereinafter "Nordheim Report") and the ideal population for CD's Three, Seven, and Eight should be 2,132,619. It was, in fact, 2,126,078--.3% from the ideal population. The Third was 19,084 over ideal population;

the Seventh was 21,594 below ideal population; and the eighth was 4,031 below ideal population. (Nordheim Aff., ¶ 2, Exh. B, p. 4.)

The redrawing of congressional boundaries for the Third, Seventh, and Eighth should have been a no-brainer. Nothing had really changed regarding the population. (Obey Aff., ¶ 20.) There was minimal population that needed to be shifted from one CD to another and the districts were contiguous. Six of the eight members of the congressional delegation (Republican representatives Ryan, Sensenbrenner, and Petri, and Democratic representatives Kind, Baldwin, and Moore) had all agreed to the previous boundaries adopted in 2001. (Obey Aff., ¶ 12) All that was needed was to shift about 20,000 in population from the Third to the Seventh—a shift that could be easily accomplished. Nothing needed to be done in the Eighth as a disparity of 4,000 from ideal population is not considered significant.

However, instead of shifting 20,000 people, the bill that was enacted (Act 44) shifted a population of 799,841 in Districts Three, Seven, and Eight. (Nordheim Report, p.5.) This is 40 times the population that needed to be shifted.

The Intervenor-Defendants' brief summarily dismisses the boundary changes between the Third District and the Seventh District as "relatively minor." (Int-Def. Br., p. 13.) This argument is incredible.

The Congressional Redistricting Process.

For many years, following each decennial census, a representative of the congressional delegations of both parties would meet and agree upon a recommended congressional boundary map. They would consider the traditional redistricting concepts of compactness, communities of interest, and retention of core populations and submit their recommendations to the Wisconsin Legislature. The Wisconsin legislature would vote on the recommendation, and if

adopted, would send it to the Governor for signature. This process worked well and there was never a court challenge. (Obey Aff., ¶¶ 8-12.)

This process changed following the 2010 census. Republican Congressman Paul Ryan and his Chief of Staff, Andrew Speth, presented a proposed congressional boundary map to Democratic Congressman Ron Kind and his Chief of Staff Erik Olson. They objected to the map because it unnecessarily moved large numbers of voters and disrupted communities of interest by breaking up the communities of Stevens Point, Wausau, and Wisconsin Rapids as well as Wood, Marathon, and Portage Counties. Rep. Kind and Olson asked for a copy of the map but were told one was not available. Rep. Kind and Olson then presented another map but were subsequently told there would be no further discussion and that the map previously shown would be sent to the Wisconsin legislature. (Olson Aff., ¶¶ 1-11.) Shortly thereafter the Wisconsin legislature held a hearing. Congressman Obey appeared and objected to the boundaries that had been forwarded by Congressman Ryan (Obey Aff., ¶ 7.) Nonetheless, the legislature adopted the recommendation (Hassett Aff., ¶ 3, Exh. 2) and the Governor signed it into law.

The 2011 procedure violated the congressional redistricting process that had worked well in Wisconsin for many years. The new boundaries were the result of partisan politics. However, this brief will not challenge the new map on political grounds (that will be done by the Plaintiffs). Rather this brief challenges the new map on the basis that by ignoring the traditional redistricting principles of retention of core populations, compactness, and communities of interest, the new boundaries will damage representative democracy. *Prosser v. Elections Bd.*, 793 F. Supp. 859, 863-4 (W.D. Wis. 1992).

ARGUMENT

I. Representative Democracy Has Been Damaged By Act 44.

In 1992 a Three-Judge Panel determined a dispute relating to failed attempts to redistrict the Wisconsin Legislature. *Id.* At that time there was no plan that had been adopted. Nonetheless, the court said that if a plan had been adopted its job would be to determine whether the plan struck a reasonable balance among redistricting considerations. *Id.* at 864. The principal considerations discussed were community of interest and compactness with the ultimate goal being a plan that is best for representative democracy. *Id.* at 863-864.

Traditional redistricting considerations are based upon those factors that relate to representative democracy. Representative democracy requires, among other things, a well-informed electorate; an electorate that can use the political process to focus upon important issues; and an electorate that has good access to government.

Based upon these considerations Act 44 is a miserable failure in CD Three, Seven and Eight. Representative democracy will be badly damaged in these districts if the boundaries drawn in those three districts are permitted to stand.

II. Act 44 Ignores The Redistricting Consideration of Core Retention.

One of the redistricting principles is “core retention”. *See Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1349 (N.D. Ga. 2004). This means retaining the core of the previous district.¹

Core retention deals with a person’s continued relationship to the same district. It is based on the understanding that the more familiar voters are to their district and their representatives

¹ The defendants in this action named three individuals in their amended Rule 26 Disclosures “who were involved in reviewing population and other data so as to preserve, to the extent possible and practicable, the core population of prior districts as well as communities of interest.” (Hassett Aff., ¶ 7, Exh. 6.). However, none of these individuals claimed any knowledge concerning how these factors were used in determining congressional boundaries.

the more informed they will be about the issues in the district and the better access they will have to government

David R. Obey was the congressman from the Seventh Congressional District for more than forty years, from 1969 until 2011. He has been involved in redistricting since the 1960's. (Obey Aff., ¶¶ 8-9.) It is unlikely that any person knows the importance of maintaining the core within a congressional district better than Congressman Obey. According to Congressman Obey in his attached affidavit:

16. Another important consideration is to uproot the smallest number of constituents from one district to another consistent with the needs of equal representation.

17. This is important for the following reasons among others:

- a. One of the important duties of a member of congress is to provide constituent services to those he or she represents. That is best accomplished if confusion about which district citizens live in is minimized to the greatest possible degree. Constituent services can be a variety of things: assistance with passports, providing information about government programs, helping to confront government agencies or expressing opinions on issues before Congress. My staff and I would be constantly dealing with the needs of private citizens to understand how to gain access to government services and information. These are usually people who cannot afford a lobbyist. This access to government I believe falls under a citizens' right to petition government.
- b. People will best understand the positions taken by the representative in their district and will be better equipped to cast an informed vote than would be the case if they are continually confused about which district they now reside in. Moving voters will cause them to be less informed and more confused.
- c. Parties form organizations that are based upon district boundaries. Unnecessarily moving voters disrupts those organizations, and their ability to provide useful information.
- d. Unnecessarily disrupting the link between constituents and their districts of residence will lower voter turnout and participation because of a lack of information. Voter turnout in U.S. elections is already

lower than in many countries – not something to be desired in the world's oldest democracy.

18. For these reasons and others when I worked on redistricting with other congressmen we believed it was highly important to move as few voters as possible.

(Obey Aff., ¶¶ 16-18.)

The above reasons are self-evident. However, Act 44 ignored these considerations when the boundaries of the Third, Seventh, and Eighth Districts were redrawn. According to Obey:

19. I have reviewed the congressional districts passed by the Wisconsin Legislature and it is my opinion that this map violates the principle of core retention in many respects.
- a. In the Seventh Congressional District the ideal population could largely have been accomplished by simply placing the balance of Clark County in the Seventh Congressional District.
 - b. Instead the new boundaries disrupt the continuity of congressional representation by moving hundreds of thousands of people in Wood, Portage, St. Croix, Monroe, Jackson, Juneau, and Chippewa County into and out of the Seventh Congressional District.
 - c. In the Eighth Congressional District it would only be necessary to add about 4,000 people to achieve the target population and maintain the district boundaries agreed to in 2002 by the bipartisan Wisconsin Congressional Delegation. Instead, the new boundaries unnecessarily moved more than 80,000 people.
 - d. In the Sixth Congressional District it would only be necessary to move about 5,700 people.
 - e. In the Fifth Congressional District it would only be necessary to move about 3,300.
 - f. The only districts with significant population changes since the last census which require major transfers of people are the Second (Madison area) which gained population and the Fourth (Milwaukee) which lost population. Those boundaries could be easily adjusted to accommodate the required changes without needless disruption to the population or the boundaries of the Third, Seventh, and Eighth districts as set forth above.
20. The redistricting after the 2000 census should have been a very simple process since the number of Congressional seats did not change and the population did not change significantly.

(Obey Aff., ¶¶ 19-20.)

The 2002 redistricting plan was recommended by a bipartisan congressional delegation. It was passed by the Wisconsin legislature and signed into law by the Governor. It was not challenged in court. There would be no reason to change those districts unless there had been large population shifts, the state had lost a congressional seat, or there had been changes in the ethnic composition of a district requiring changes because of the Voting Rights Act.

None of these considerations are relevant for the Third, Seventh, or Eighth Congressional Districts. Therefore, the overriding principle should be to retain the core populations of these Districts. (Obey Aff., ¶ 12.) Act 44 violates this principle to the extreme and is totally lacking in logic.

The tables reproduced below were prepared by Professor Erick V. Nordheim. (Nordheim Report, table 3 and figure 1.) They depict the extreme movements of population proposed. For example in District Seven a total of 322,384 people are either shifted into or out of District Seven so that the end population will be increased by 21,594. This same result could have been largely achieved by leaving the Seventh District alone except to place all of Clark County in District Seven, rather than splitting it between District Three and District Seven as was done in the 2001 redistricting. (Obey Aff., ¶ 19a.)

All that must be done in these three districts was to change the voting district of approximately 20,000 people in Clark County from the Third District to the Seventh District. This would likewise prevent the movement of 360,624 people in connection with the Third District and achieve core retention.

Table 3 ... shows a tabulation of the total population shifted “in to” and “out of” each district. Figure 1 presents the same information in graphical form.

District	shifted in to	shifted out of	net shift (in)
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1	24,715	41,883	-17,168
2	77,850	118,145	-40,295
3	171,270	190,354	-19,084
4	63,109	21,251	41,858
5	177,822	174,529	3,293
6	144,923	139,152	5,771
7	171,989	150,395	21,594
8	59,752	55,721	4,031

Table 3: Overall tabulation of population that would be transferred “in to” and “out of” each district under the proposed plan.

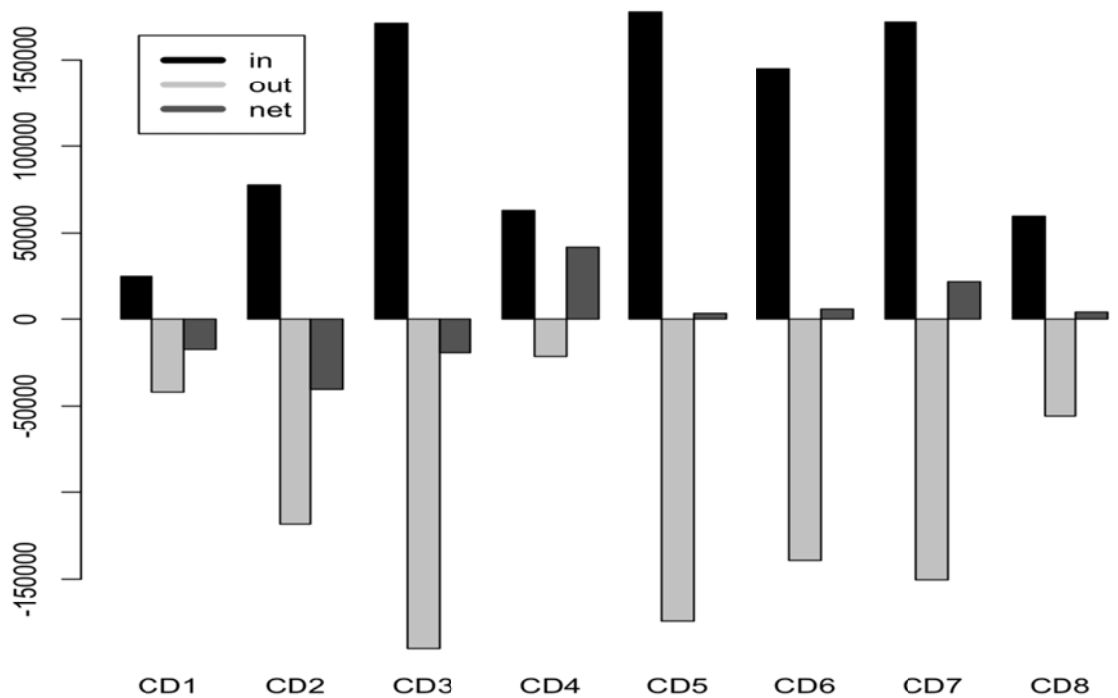


Figure 1: Graphical representation of transferred population based on Table 3.

By simply placing all of Clark County in the Seventh Congressional District 100% of the population that voted in the Seventh Congressional District in accordance with the 2001 court plan would continue to vote in the Seventh Congressional District. This is contrasted to Act 44 that shifts 150,395 out of District Seven and shifts in 171,989 to achieve a net gain of 21,594.

No legitimate reason, incorporating recognized redistricting standards and principles, can be given for requiring this massive shift of population to achieve a minimal net change. In fact none exists.

The Third District adjoins the Seventh District primarily on the eastern border of the Third. (Hassett Aff., ¶¶ 2-3, Exh. 1-2.) The 20,000 that would be shifted out of the Third District and placed into the Seventh District would mean that 97% of the population of the Third District would be retained under Act 44. However, Act 44 totally ignored the principle of core retention and moved 190,354 people into the District and moved out 171,270.

The movement of these 361,624 people required a massive redrawing of the boundaries. St. Croix County, which borders the Mississippi River in the northwestern part of the State, was taken out of the Third and placed in the Seventh. Portage County, through which the Wisconsin River flows in Central Wisconsin, was taken from the Seventh and placed in the Third. Wood County, through which the Wisconsin River flows in Central Wisconsin, was formerly in the Seventh and now is split between the Seventh and the Third. Juneau County was formerly in the Third and is now split between the Seventh and the Third. Monroe County was formerly in the Third and is now split between the Seventh and the Third. Jackson County was formerly in the Third and is now split between the Seventh and the Third. Chippewa County was formerly in the Seventh and is now split between the Seventh and the Third. (Hassett Aff., ¶ 4, Exh. 3.)

All that was needed was to place all of Clark County in the Seventh District as Act 44 did. (Hassett Aff., ¶ 4, Exh. 3.) The redrawing of the boundaries for the Third is totally irrational.

District Eight lies to the east of District Seven. (Hassett Aff., ¶ 2-3, Exh. 1-2.) District Eight was only 4,031 people below ideal population if the 2001 plan was used. This is only .57% below ideal population. According to *Prosser* a deviation of one percent from ideal population is trivial. 793 F. Supp. 859, 866. This deviation is within only a few hundred people from meeting that threshold and is likewise trivial. If the boundaries of the Eighth are unchanged it would retain 100% of the core population. Instead, Act 44 inexplicably moved 55,721 out of District Eight and moved in 59,752.

The remaining five Districts are contiguous. (Hassett Aff., ¶ 2-3, Exh. 1-2.) Under Act 44 these districts form a rather compact block in the southeastern portion of Wisconsin. The largest deviations from ideal population are modest. The Second District (containing Madison) has grown in population and should be reduced 5.6% to reach ideal population. The Fourth District (containing Milwaukee) has lost population and should be increased by 5.9% to reach ideal population. (Nordheim Report, p. 3.) The remaining three districts need lesser population changes to reach ideal population. (Nordheim Report, p. 3.) This means that 2001 boundaries of these five districts could be changed without impacting the Third, Seventh, and Eighth Districts. (Obey Aff., ¶ 19f.)

III. Act 44 Violates The Redistricting Principle of Compactness.

Another key redistricting principle is compactness. This is considered desirable to reduce the travel time in campaigning and for the representative to travel throughout the district. The proposed redistricting plan reduces the compactness of the Third, Seventh and Eighth districts as

compared to the prior plan. The reduction in compactness is statistically demonstrated by Professor Nordheim. (Nordheim Report, pp. 6-9, table 4 and figure 2.) However, all one needs to do is to look at a map and compare the old districts to those proposed. (Hassett Aff., ¶¶ 2-3, Exh. 1-2.)

District Seven is particularly egregious. The district begins in the far northern part of the state at Lake Superior. Its southern terminus formerly was at the southern boundary of Portage and Wood County. These counties contain the significant population centers of Stevens Point (Portage County), Wisconsin Rapids (Wood County), and Marshfield (Wood County). The new boundary snakes around Portage County to exclude Stevens Point and bisects Wood County to exclude Wisconsin Rapids and then travels south to the southern tip of Adams County. (Hassett Aff., ¶ 4, Exh. 3.)

District Three is expanded eastward to envelope Portage and portions of Wood County. District Eight is expanded in the northwest to include Vilas County and expands in the South to include Calumet County.

A reduction in compactness can be justified to avoid dilution of ethnic minorities. However, that is not an issue in Districts Three, Seven and Eight. Compactness can also be reduced because of large population shifts. Again, this was not a factor. Finally, compactness can be reduced to accommodate communities of interest. That was not only a non-factor here, but Act 44 did the exact opposite.

Although the issue of compactness can be demonstrated by statistical methods, such an exercise ignores the real significance of why compactness is necessary for the best interests of representative democracy. Congressman Obey was the longest serving congressman in the history of Wisconsin. (Obey Aff., ¶ 4.) He also served in the largest district in Wisconsin, a

sprawling, thinly-populated area. No one in Wisconsin knows the problems in general associated with a non-compact district more than Congressman Obey and its impact on representative democracy. No one knows the particular problems associated with Act 44 more than Congressman Obey. According to Obey:

21. It's very important for Districts to be compact and the bipartisan Wisconsin delegations always strived to honor this consideration.
22. Compactness reduces travel time before elections, during campaigns and after campaigns in performing representational duties to make candidates and representatives more accessible to constituents.
23. Compactness also impacts the media market as television coverage, radio coverage, and newspaper coverage is limited to a specific geographic area. Constituents receive considerable information concerning their congressional representative through those media markets, especially television. Campaigning is also dominated by television ads and television coverage. In western Wisconsin, the boundaries approved by the legislature further fragment the major media market for that area, making meaningful information less likely to be conveyed, and raising the cost of whatever communication is provided. The primary television coverage for western Wisconsin is provided by Minnesota and Twin Cities media outlets. Most of that coverage is presently provided to Third District counties such as Pepin, Pierce, Buffalo, and St. Croix counties. The new map split St. Croix County from that Third District and moved it to the Seventh. The result is that Third District candidates will need to continue to purchase Twin Cities media because it covers a major part of the district. Up until now, Seventh district candidates purchased very little Twin Cities media because only a small part of the Seventh district, such as Polk county, is dominated by Twin Cities television. This new map makes it more necessary for Seventh district candidates to also purchase Twin Cities media, unnecessarily raising the cost of campaigns.
24. Compactness makes it easier for democracy to work because it facilitates communications between the representative and the public. Since Marathon, Wood, and Portage Counties are one media market, communications by a member of Congress can be broadcast throughout those three counties. The new district boundaries reduces the ability of the Seventh District representative to communicate with the public since all of Portage County and much of Wood County have been moved from the Seventh Congressional District, to the Third Congressional District which receives most of its news from La Crosse television outlets. Little information about Third district affairs will reach Portage County residents under this arrangement.

25. The new boundaries further reduce compactness by snaking the district boundary around Portage and part of Wood County and appending portions of Juneau, Jackson, and Monroe Counties so that these fractional counties could be added to the Seventh District. This makes no sense.
26. In the northern portion of the district the new boundary line now extends to Florence County. This increases travel time from west to east by about an hour as the community of Florence in Florence County is about a five hour drive from Superior in Douglas County whereas formerly it was about a four hour drive from Superior to Three Lakes which was on the eastern boundary of the former district. The addition of territory as far southeast as Monroe County unnecessarily adds an hour's drive time to get from Superior to Monroe County and even more to get from the northeast regions of the new district to the southwest regions of Monroe and Juneau Counties. This will reduce communications between the representative and the populations in the far corners of the district. The Seventh Congressional District was geographically already the largest congressional district in Wisconsin. Now it is unnecessarily made even larger geographically.
27. If the boundaries of the Seventh and Third are merely adjusted as set forth above those districts will be more compact than the new districts.

(Obey Aff., ¶¶ 21-27.) The problems recited above by Congressman Obey are real.

Computer programs, now commonly used in drawing redistricting boundaries, are oblivious to the significance of media markets and their ability to inform voters.

Increasing drive times will inevitably reduce personal contact between voters and their representatives. The new Seventh District boundaries will reduce a voters' personal and media contact with their representative and with their representative's opponent.

IV. Act 44 Ignores Communities of Interest.

Likewise, computerized programs cannot evaluate communities of interest. However, various courts, including the three-judge panel in the *Prosser* redistricting case found the concept important.

The concept of a community of interest recognizes that groups of voters share similar concerns and values, and that such values must be represented in and addressed by their legislature. *See* Stephen J. Malone, “Note: Recognizing Communities of Interest in a Legislative Apportionment Plan,” 83 Va. Law Rev. 461, 465-466 (1997). This notion, that a “diversity of interests” should be reflected in the legislature, dates back to the Founders and the American Revolution. John Adams wrote that a representative legislature, “should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason and act like them.” *Id.* at 465 n 26.

Community of interest has been enshrined in the constitutions of several states. Alaska Const. art. VI, § 6 (new districts shall contain “as nearly as practicable a relatively integrated socio-economic area”); Colo. Const. art. V, § 47; Haw. Const. art. IV, § 6; Okla. Const. art. 5, § 9A. In employing Colorado’s definition, the district court for the district of Colorado stated that communities of interest represent:

Distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status or trade. We are convinced that a plan which provides fair and effective representation for the people of Colorado must identify and respect the most important communities of interest within the state.

Carstens v. Lamm, 543 F. Supp. 68, 91 (D. Colo. 1982). That same court applied their definition to craft six Congressional districts: an urban district, a trade/industry district, a growth district, a mountain district, an agricultural district and a Colorado Springs area district. *Id.* at 96-97.

Similarly, in *Legislature of the State of California v. Reinecke* the Supreme Court of California approved of a Special Masters apportionment plan, who noted:

The social and economic interests common to the population of an area which are probable subjects of legislative action...should be considered in determining whether the area should be included within or excluded from a proposed district in order that all of the citizens of the district might be represented reasonably,

fairly, and effectively. Examples of such interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.

The Special Masters in that case recognized communities of interest based around the aviation industry and agriculture, as well as transportation corridors. 516 P.2d 6, 24, 26-27, 30, 31 (Cal. 1973). The Masters also tried to maintain the contiguity of frequent traffic patterns. *Id.* at 26-27. In *Mellow v. Mitchell*, the Pennsylvania Supreme Court also recognized communities of interest in adopting a new apportionment plan, relying on transportation patterns and social affiliations. 607 A.2d 204, 220-221 (Pa. 1992), cert. denied 506 U.S. 828 (1992). Federal district courts in Indiana and Arizona have also considered community of interest in reviewing redistricting plans. *Bandemer v. Davis*, 603 F. Supp. 1479 (S.D. Ind. 1984), rev'd 478 U.S. 109 (1986); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688 (D. Ariz. 1992), appeal dismissed sub nom. *Arizona State Senate v. Arizonans for Fair Representation*, 507 U.S. 980, and aff'd sub nom. *Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981 (1993).

Finally, community of interest is not a foreign concept to Wisconsin jurisprudence. This court relied heavily on the concept to draw an apportionment plan with the "objective of preserving identifiable communities of interest." *Wisconsin State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 636 (E.D. Wis. 1982). This court considered communities based on race and income, as well as trying to keep suburbs intact in crafting boundary districts. *Id.* at 636-638.

Since at least the 1930's Marathon, Portage, and Wood Counties have been thought of as a single unit. (Obey Aff., ¶ 14.) Geographically the three counties are contiguous with regular borders. (Hassett Aff., ¶¶ 5-6, Exh. 4-5.) The major cities are Wausau, Stevens Point,

Wisconsin Rapids, and Marshfield. Stevens Point is about a half an hours drive from all three. The Wisconsin River flows through Wausau, Stevens Point, and Wisconsin Rapids, and has played a major role in the economic activity of all three. (Obey Aff., ¶ 30.) Former Governor Lee Sherman Dreyfus, (a Stevens Point resident) referred to the three county area as the “Ruralplex” because of its economic and cultural integration. (Obey Aff., ¶ 31.)

Act 44 ignores communities of interests. Despite the long history of recognition of these counties as a single unit, Act 44 splits off Portage County, which contains Stevens Point, and divides Wood County so that Wisconsin Rapids is in the Third District and Marshfield is in the Seventh District. (Hassett Aff., ¶¶ 4-6, Exh. 3-5.)

Congressman Obey, himself a Wausau native, intimately knows the community of interest between Marathon, Portage, and Wood Counties.

28. Communities of interest are very important politically. The collective power of a group of people or entities can become better informed and have a stronger influence on governmental action and legislation than can a single individual. Communities of interest are usually more effective if the focus is upon a single representative.
29. Since at least 1938 Marathon, Portage, and Wood County have been in one congressional district. This has facilitated thinking of these counties as a single integrated economic and cultural unit.
30. The single most unifying community of interest in the Seventh Congressional District before the recent redistricting is the Wisconsin River.
 - a. The Wisconsin River is called the hardest working river in the United States. This is because the river has led to economic development. In early years sawmills were built in Merrill, Wausau, Mosinee, and Stevens Point.
 - b. In later years the river became a great source of hydro-electric power. Today hydropower is still used to power paper mills on the river including:
 - i. Rhinelander Paper Co. in Rhinelander,
 - ii. Packaging Corp. of America in Tomahawk,
 - iii. Wausau Papers in Brokaw,
 - iv. Weyerhaeuser Papers in Rothschild,

- v. Mosinee Papers in Mosinee,
 - vi. Stora Enso (Consolidated Paper) in:
 - 1. Stevens Point,
 - 2. Whiting,
 - 3. Biron ,
 - 4. Wisconsin Rapids,
 - vii. Georgia Pacific in Nekoosa and Port Edwards.
 - c. All of the above 11 sites were located in the Seventh Congressional District for decades before the most recent redistricting.
 - d. Today the six latter sites have been taken out of the Seventh District and placed in the Third.
 - e. The river and the numerous impoundments are also a major source of recreation.
 - f. The industrial development of the river has brought with it a number of related community interests relating to water quality, water levels, air quality, real estate, shoreland zoning, and tourism.
 - g. One of the reservoirs is Lake Dubay. It is within or near the borders of Marathon, Portage, and Wood Counties. It covers 6,830 acres and has 43 miles of shoreline.
 - h. The Wisconsin Valley Improvement Corporation is located in Wausau, Wisconsin. It manages the Wisconsin River flowage of Lake DuBay to ensure that community, recreation, and paper industry needs are fulfilled in the region as well as managing for flood control. These needs were formerly all in the Seventh District now they are split between the Seventh and the Third Districts
 - i. The Wisconsin River flows through Wausau (Marathon County), Stevens Point (Portage County), and Wisconsin Rapids (Wood County). All three of these cities were formerly in the Seventh District. Stevens Point and Wisconsin Rapids have now been moved to the Third District.
31. In the early 1980's, Wisconsin Governor Lee Sherman Dreyfus, himself a resident of Central Wisconsin, urged that the area be thought of as a common unit. He referred to Marathon, Portage and Wood counties as the "Ruralplex." This is because these three counties were a highly integrated economic and cultural hub for Central Wisconsin.
- a. The Central Wisconsin Regional Airport is a joint venture between Marathon and Portage counties.
 - b. Major highways connect the three counties.
 - c. The University of Wisconsin Stevens Point draws from the three counties.
 - d. Wausau is the regional shopping hub of Central Wisconsin. The Cross Road Commons in Stevens Point also serves the region.
 - e. Major Insurance Companies are headquartered in Wausau and Stevens Point.

- f. The region has highly integrated medical services. Ministry Health Care and Aspirus and their affiliates are major providers and major employers in the region.
- g. The same ABC, CBS, NBC, Fox and Public Television affiliates serve all three counties. Gannett Newspapers owns all four local newspapers.

32. High Schools from Wausau, Marshfield, Stevens Point, and Wisconsin Rapids all are members of the Wisconsin Valley Conference.

(Obey Aff., ¶¶ 28-32.)

Professor Randy F. Cray is a Professor of Economics at the University of Wisconsin – Stevens Point. Since 1986 he has been the Director of the Central Wisconsin Economic Research Bureau (CWERB). The mission of the CWERB is to bring timely economic analysis and information to the UW Stevens Point service area, consisting primarily of Portage, Marathon and Wood Counties, in order to foster economic development in the region. (Cray Aff., ¶¶ 1-2.) It is his opinion, to a reasonable probability, based upon his education, training and experience that the three county Central Wisconsin area incorporates a strong community of shared interests (Cray Aff., ¶ 4) based upon the following facts:

- a. Many years ago former Wisconsin Republican Gov. Lee Sherman Dreyfus referred to the four urban areas of Central Wisconsin as a Rural Plex: Wausau, Stevens Point, Marshfield, and Wisconsin Rapids. Essentially he was saying that our area is highly integrated and has a complementary set of economic activities.
- b. Centergy Inc. is an economic development organization located in Wausau that is supported by most of the economic development agencies in Central Wisconsin. Centergy, among many other things, lobbies on the behalf of Central Wisconsin's economic development.
- c. The commuting patterns of workers suggest there is a common labor pool in the region.
- d. Central Wisconsin is one television and radio market. The same ABC, CBS, NBC, FOX and Public Television affiliates serve the entire area. Gannett

Newspapers owns all four local newspapers. Radio is basically the same story.

- e. The Central Wisconsin area and communities have very strong ties to the paper industry.
- f. The Central Wisconsin Regional Airport is a joint venture between Marathon and Portage counties.
- g. Of Wisconsin's 72 counties, The University of Wisconsin Stevens Point draws a significant percentage (27% in 2010) of its students from Marathon, Portage and Wood Counties.
- h. The Rural Plex of Central Wisconsin is connected by four lane highways and has short commute times.
- i. The central Wisconsin Region has a highly integrated medical services sector. For example Ministry Health Care and Aspirus and their affiliates are major health care providers in our communities and are major employers in the region.
- j. Wausau is the retail hub of Central Wisconsin. The Wausau Mall and the Rib Mountain shopping area draw heavily from the area population. The Crossroads Commons in Stevens Point-Plover also serves as a regional shopping area.
- k. The agricultural base of our area is predicated on potatoes, green beans, ginseng, corn, cranberries and dairy/cheese production. Moreover, food manufacturing is a large employer in the area.
- l. The insurance industry is highly concentrated in our Central Wisconsin, Sentry Insurance, Liberty Mutual, AIG Travel Guard, and Church Mutual (in Merrill) are all headquartered in our area and are some of our largest employers.
- m. The Wisconsin Valley Improvement Corporation manages the Wisconsin River flowage in our area to ensure that community, recreation, and paper industry needs are fulfilled in our region.
- n. Marathon, Portage and Wood counties are much more alike than the surrounding counties in terms of urbanization and employment levels.

(Cray Aff., ¶ 4.) The proposed redistricting will split these communities in half.

Exhibit 5 is a Wisconsin road map for this three county area. (Hassett Aff., ¶ 6, Exh. 5.) The map shows how Portage County and portions of Wood County have been carved out of the Seventh District and placed in the Third District. Exhibit 5 shows how the system of roads and the Wisconsin river connect these counties. In addition, Professor Cray has identified various communities of interest on the map. By splitting off Stevens Point and Wisconsin Rapids from Wausau and Marshfield, the communities of interest which connect the area have been fractured.

The Third and the Eighth Congressional Districts also have communities of interest. Congressman Obey has dealt with drawing the boundaries of these districts for decades.

According to Obey:

33. For many decades the Third Congressional District has been considered the Mississippi River valley district. The economic development of that area has been tied to the Mississippi River in ways similar to the Wisconsin River.
34. Monroe and Jackson counties have now been unnecessarily split between the Third and the Seventh District. These counties are more closely connected economically to La Crosse which is in the Third District than to any community in the Seventh District
35. The Eighth Congressional District has always been considered the Fox River, Green Bay, and northwestern Lake Michigan area. Its development has likewise been tied to these waterways.
36. In 2002 the bipartisan congressional delegation, the Wisconsin Legislature and the Governor all recognized that the boundaries set forth by the 2002 redistricting incorporated the communities of interest of the Third, Seventh, and Eighth Congressional Districts.

(Obey Aff., ¶¶ 33-36.)

Communities of interest determine the issues that are significant in an area. However, communities of interest do not mean that all residents believe the issues should be resolved the same. For example, the Wisconsin River creates a huge community of interest in the area. The

use of the river causes economic and recreational activity. These activities create a number of concerns such as water quality, air quality, water flow. The residents of the area will sometimes have differing opinions regarding these issues. Splitting the communities of interest will dilute the focus and the healthy debate that the people will have on these issues.

Another principle of redistricting is to avoid dividing political units. Under the 2001 alignment the Seventh District divides three counties (Clark, Oneida, and Langlade). If all of Clark is moved to the Seventh District only two counties would be divided.

The proposed redistricting has five partial counties in the Seventh District. (Chippewa, Jackson, Monroe, Juneau, and Richland). Jackson County is further fractured since there are three townships in the north that are in the Seventh District and another three townships on the east that are also in the Seventh District. However, the three townships in the north of Jackson County and the three townships in the east of Jackson County are not contiguous.

The Third District only divided Clark and Sauk Counties in 2001. It now divides Wood, Chippewa, Jackson, Monroe, Juneau, and Richland Counties.

The Eighth district currently has four divided counties: Oneida, Langlade, Outagamie, and Calumet. The proposed alignment has one, Outagamie. However, the Eighth only needed to add 4,031 in population. The proposal does this by changing the voting district of a population of 115,473 people, by adding portion of two new counties (Winnebago and Calumet) and subtracting 3 counties (Vilas, Florence, and Forest) and portions of four others (Oneida, Langlade, Winnebago, and Calumet).

CONCLUSION

For years fact-finders have dealt with such standards as the “reasonable man”, “more dangerous than would be anticipated by the ordinary consumer”, “as safe as the nature of the place would reasonably permit.” The redistricting concepts outlined above are no more difficult to apply than concepts historically dealt with by fact-finders. This motion for summary judgment must be denied so that the fact finder can determine whether the concepts of retention of core population, compactness, and communities of interest have been violated by Act 44.

Dated this 3rd day of January, 2012.

/s/ P. Scott Hassett

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